

1 | Monday, 15 July, 1946

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment, at 0930.

Appearances:

For the Tribunal, same as before.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

(English to Japanese and Japanese

to English interpretation was made by the Language Section, IMTFE.)

W
h
a
l
e
n
&
D
u
d
a

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session
3 and ready to hear any matter brought before it.

4 THE PRESIDENT: All the accused are present
5 except OKAWA and HIRANUMA, who are represented by
6 counsel.

7 I have here a certificate from the prison
8 medical officer at Sugamo Prison. He says:

9 "This is to certify that Kiichiro HIRANUMA
10 was placed in the 361st Station Hospital on
11 12 July 1946 for medical observation and treatment."

12 Let that be recorded and filed.

13 Chief Justice Higgins, of the Massachusetts
14 Superior Court, with the consent of the Supreme Com-
15 mander, has withdrawn as a Member of the Tribunal.
16 Since his arrival in Japan a few months ago his
17 immediate successor in office died, and the present
18 Acting Chief Justice is in advanced years and poor
19 health and Chief Justice Higgins does not feel justi-
20 fied in placing the added burden of administering the
21 affairs of a large court of thirty-one members upon
22 him for the period of time it will take to try this
23 case. I add my personal regrets at the retirement
24 of Chief Justice Higgins.

25 We notice a change in the temperature of this

court this morning, due, I understand, not to the installation of air conditioning but to the operation of some other appliance. No Member of this court requested that air conditioning be installed. That was directed by the Supreme Commander, who had the advantage of medical reports. We are seeing that the Supreme Commander's directions are carried out.

Undoubtedly air conditioning is necessary in this building. This court is situated in the well of the building, ventilation is almost completely shut out, the court is usually crowded and for a considerable portion of the time we have a blaze of lights more profuse than anything outside Hollywood.

15 Does counsel desire to mention any matter?

16 MR. JUSTICE MANSFIELD: If the Tribunal
17 please, the question of the affidavits and reports
18 in connection with the prisoner-of-war phase of the
19 case was to be reconsidered by the Court. I ask
20 leave to bring the matter and some further facts
21 before the Court this morning.

I point out that the affidavits were not prepared for use in this particular trial, but were prepared as part of an investigation over the whole of the areas in which prisoners of war were detained.

1 Most of the affidavits, therefore, deal with condi-
2 tions in several areas or several camps. In most
3 cases the excerpts which the prosecution desires to
4 use in evidence are taken from those affidavits and
5 relate to one and possibly two of the areas referred
6 to. The contents of the affidavits as to other
7 areas are to that extent not material to the matter
8 which is being used in the affidavit by the prosecu-
9 tion.

10 As an example, I have two examples here.
11 The first one is a report consisting of thirty-five
12 pages out of which **three** pages referring to two
13 camps the prosecution desires to use. The other one
14 is an affidavit dealing with conditions in Hong Kong
15 and Japan, and the prosecution merely desires to use
16 three and a half out of fifteen pages, confining it
17 to conditions at Hong Kong. The whole affidavit will,
18 of course, be the evidence, the original evidence,
19 and that, of course, will be lodged in court and will
20 be available for the defense to peruse.

21 The number of pages of excerpts is approxi-
22 mately 1500. A hundred copies of those have to be
23 made, and that will amount to 150,000 pages. If
24 copies of the whole affidavits are put in the number
25 of pages will amount to approximately 10,000, and if

1 a hundred copies have to be made of the whole of the
2 affidavits, that will amount to approximately a ..
3 million pages to be copied. Approximately 80,000
4 pages of copies were made before the rule came into
5 force and they, of course, will be entirely useless
6 if they cannot be used as excerpts.

7 With regard to other material, for example,
8 the Allied Translation and Interpreters Section
9 reports, ATIS reports, it is desired to use in evi-
10 dence extracts from four of those reports. The re-
11 ports run into, in some cases, one hundred pages in
12 full, and only approximately one page from each is
13 desired to be used. The extract is taken from a sec-
14 tion of the report, which is different from other
15 portions of the report, and the prosecution could, of
16 course, copy the whole of the particular section from
17 which the excerpt is made if it is excused from copy-
18 ing the whole of the report. The complete volume of
19 the report will, of course, be the original document
20 which will be introduced in evidence. There are
21 other proceedings, such as the transcript proceedings
22 of Japanese investigation into the massacre at Naha.

23 MR. McMANUS: Mr. President, if the Tribunal
24 pleases, I ask that counsel be requested to refrain
25 from characterizing, using such words as "massacre at

1 Naha." That is to be determined by the Court.

2 THE PRESIDENT: You are unduly sensitive.

3 These terms are employed by the prosecution at times.

4 It does not follow the Court accepts them.

5 MR. JUSTICE MANSFIELD: The proceedings
6 relating to the alleged massacre run into a number of
7 pages, and it is intended, or desired, by the prosecu-
8 tion to use only the evidence of two witnesses who
9 were eyewitnesses of the events which form the sub-
10 stance of the alleged massacre; and it is, therefore,
11 desired to be excused from copying the whole of the
12 proceedings, and in place of that that the evidence
13 of two witnesses, eyewitnesses, alone, the complete
14 evidence, be copied so that they can be distributed
15 to the defense. The complete transcript runs into
16 over three hundred pages, and the number of pages to
17 be used will be very much less than that.

18 I, therefore, ask the Tribunal grant the appli-
19 cation of the prosecution with regard to the documents
20 which I have mentioned and allow the prosecution to
21 provide copies of the excerpts for the defense, and
22 that the whole document will, of course, in the ordi-
23 nary course be presented to the Secretariat and will
24 be available for use by the defense.

G
r
e
e
n
b
e
r
g
&
B
a
r
t
o
n1 THE PRESIDENT: Mr. McCormack.
2

3 MR. McCORMACK: If the Tribunal please, on
4 July 3 last, it is my understanding that the Court,
5 after taking some time during a recess, entered an
6 order for the prosecution to introduce these ex-
7 cerpts, to file the originals, to lodge them with
8 the Clerk of the Court, to give the defense counsel
9 ample facilities to examine them; and then, in one
10 month from July 3, copies of these documents were
11 supposed to be furnished the defense; thirdly, that
12 the defense was to be furnished the addresses of the
13 affiants in these affidavits and reports to the
14 extent to which they are available to the prosecu-
15 tion.

16 I might mention further that things the
17 counsel says are unfamiliar to us. He steps up with-
18 out any prior notice on our part and addresses the
19 Court on this matter. It would seem to the defense
20 more logical in a proper procedure if, before these
21 matters are brought to the Tribunal, the defense
22 were furnished copies of the excerpts that they
23 intend to submit in evidence. Under those circum-
24 stances, we would have a better idea about what is
25 going on, what is trying to be introduced, and better
able to defend ourselves against this particular

1 motion.

2 MR. JUSTICE MANSFIELD: I've been informed
3 that I said that the whole report would be in evi-
4 dence. That is not correct. The whole report will
5 be produced, of course, but only the particular part
6 relied upon will be in evidence. I desire my previous
7 statement to be corrected to that extent.

8 I would suggest, in reply to what has been
9 stated, on the fifth of July the Court stated that
10 it would reconsider the matter. Speaking from
11 memory, it was either the fifth or sixth of July
12 when the Court said it would reconsider the matter,
13 and also no order was made in connection with ATIS
14 and other reports by the Court; and, if the copies
15 of excerpts are furnished to the defense as re-
16 quested by the defense, then, of course, it will
17 mean, in the event of the whole affidavit being put
18 in, the work will have to be done twice, and in-
19 stead of one million pages, there will probably be
20 two million.

21 MR. FURNESS: If the Court please, the de-
22 fense understands that this substantially has already
23 been decided in open Court. Certain questions were
24 raised, after that decision in the afternoon of the
25 third, by Mr. Justice Mansfield. The Court took

1 those under consideration. We also remember that
2 the Court considered the matters in Chambers and, at
3 that time, reached no decision on those matters. I
4 think I'm correct on that.

5 We ask the Court to adhere to its decision
6 and, certainly, to give us the names and addresses
7 of all persons making the affidavits, so far as they
8 are available, the names and addresses of all persons
9 making reports which have been mentioned, ATIS and
10 otherwise.

11 THE PRESIDENT: Some modification on the
12 decision appears to be necessary because the prose-
13 cution haven't copies of all the documents so that
14 they may comply with the decision.

15 MR. FURNESS: My understanding is that the
16 Court ordered them to make copies and that the dif-
17 ficulties are mechanical difficulties which could be
18 solved, and those mechanical difficulties should not
19 be taken advantage of in order not to comply with
20 the Court's order.

21 THE PRESIDENT: The Court will reconsider
22 the whole matter.

23 Mr. Darsey.

24 MR. DARSEY: Mr. President, I should like
25 at this time to present some of the counsel in charge

1 of the China Aggression phase of the case who, at
2 this time, pursuant to order of the Court, will pre-
3 sent the testimony of some of the Chinese witnesses
4 who have to return to China.

5 Colonel Thomas H. Morrow, member of the
6 Ohio Bar, on leave from the Common Pleas Court of
7 that State;

8 Kenneth N. Parkinson, member of the Court of
9 the District of Columbia and the United States
10 Supreme Court; and

11 Major James H. Brock of the Boston, Massa-
12 chusetts Bar.

13 COLONEL MORROW: If the Tribunal please --

14 THE PRESIDENT: Before you commence, Major,
15 we have just been informed that the temporary relief
16 we got this morning from that blast of cold air is
17 not likely to last because the water supply will not
18 allow it. We are now about to experience the same
19 severe heat that we did on Wednesday when we were
20 forced to adjourn. We propose to adjourn now until
21 we are advised that the air conditioning has been
22 installed.

23 We will adjourn to a date to be fixed.

24 (Whereupon, at 1010, an adjourn-
25 ment was taken.)
